IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 114 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIRA BAPUJI BHAGWATE WD/O BAPUJI PANDURANG BHAGWATE

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR ANAND L SHARMA for the Petitioner

MR M.R.MENGDEY, AGP for the Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 19/01/2005

ORAL JUDGEMENT

The petitioner, widow of one Bapuji Bhagwate, has claimed family pension under the Government Resolution dated 1st January, 1972 as modified from time to time.

Pending this petition the petitioner has passed

away in the year 2003. Her daughter-in-law has been substituted as the only heir and legal representative of the deceased petitioner.

It is the claim of the petitioner that her husband late Bapuji Bhagwate was employed in the erstwhile State of Bombay. He was posted as Talati at village Khadakwal, taluka Dharampur. He passed away on 17th August, 1949 in harness.

In the year 1988 or thereabout the petitioner applied to the State of Maharashtra for grant of family pension. Under communication (Annexure-`B' to the petition) issued by the Accounts Officer, O/o. the Accountant General (A&E)-1, Maharashtra the petitioner was advised to apply to the State of Gujarat for grant of family pension. Accordingly, the petitioner applied to the Accountant General, Ahmedabad for grant of family pension. Under communication dated 24th August, 2000 the Director of Pension and Provident Fund, Ahmedabad informed the District Collector, Valsad that the service record of the late Shri Bapuji Bhagwate was not available, the claim for family pension made by the petitioner, therefore, could not be accepted. Feeling aggrieved, the petitioner has preferred the present petition.

The petition is contested by the District Collector, Valsad. It is stated that the service record of the late Shri Bapuji Bhagwate is not available. It is, therefore, not admitted that the late Shri Bapuji Bhagwate had served as Talati in taluka Dharampur as asserted by the petitioner.

It appears that the family pension scheme was introduced by the State of Gujarat under its Resolution dated 1st January, 1972 under which the provision of payment of family pension was made with respect to the Government servants who were in service on 1st June, 1971. The said scheme was modified/liberalised time and again pursuant to the decisions of the Court. The provision for contribution by the Government servant concerned was done away with. The family pension was made payable to the families of such Government servants who were in service prior to 1st June, 1971 or who had not opted for family pension. By Resolution dated 19th May, 1989 the said scheme was further modified. It was decided, inter alia, that the family pension shall be paid to the eligible persons with effect from 1st April, 1989. It further mentions that, "...As provided in the

1972 Scheme the Family Pension is admissible in case of death while in service after 5 years of continuous service to the eligible family members after the Government servants death. The family pension is also admissible to the family of the Government employees who has rendered atleast two years service, this limit of 10 years for the purpose of family pension is reduced to 5 years but the service rendered should be certified to have been satisfactory by the pension sanctioning authority."

Thus, it appears that the family of the Government servant who died prior to 1st June, 1971 has also been made eligible for family pension provided such Government servant had rendered continuous service of 5 years. The family pension would be admissible even if such Government servant had rendered atleast 2 years' service. However, in that case, the period of family pension would be limited to 5 years.

As to the service of the late Shri Bapuji Bhagwate, no official record is available. The petitioner has produced copy of the Certificate dated 12th April, 1988 issued by the Mamlatdar, Dharampur certifying that the late Shri Bapuji Bhagwate had served as Talati at village Khadakwal, taluka Dharampur in the year 1949 and that he had died in the month of August, 1949 while on leave. The said certificate does not indicate the length of service rendered by the said Shri Bapuji Bhagwate. Nor does the petitioner disclose for how many years the late Shri Bapuji Bhagwate had been employed in the Government service. In absence of such factual details and any reliable evidence of the service of the late Shri Bapuji Bhagwate, the petitioner's claim for family pension cannot be accepted.

For the aforesaid reasons the petition is dismissed. Rule is discharged. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

/sakkaf